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Attorney for Plaintiff
Eric A. Klein

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ERIC A. KLEIN
Plaintiff,

vs.

CULTURED GOURMET, LLC
Defendant.

Case Number:

**COMPLAINT FOR DESIGN PATENT
INFRINGEMENT
[JURY TRIAL DEMANDED]**

Plaintiff Eric A. Klein (KLEIN) alleges in this Complaint for patent infringement against defendants CULTURED GOURMET, LLC (herein after collectively defendant) as follows:

CLAIM FOR PATENT INFRINGEMENT

JURISDICTION

1. Jurisdiction is pursuant to 28 U.S.C. § 1338, allowing original jurisdiction in this court for patent cases.

VENUE

2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(c) in that defendants are subject to personal jurisdiction in this district as defendant transact and have transacted business in this district, including activities infringing on KLEIN's patent as set forth herein.

INTRADISTRICT ASSIGNMENT

1 3. Because this case is an Intellectual Property Action, it is not subject to assignment
2 to a particular location or division of the Court under Local Rule 3-2(c).

3 **NATURE OF THE ACTION**

4 4. This is an action brought against defendant for their infringement of the United
5 States Design Patent No. D 769,060 S (the '060 patent), generally an ornamental design for
6 vegetable fermenting kitchenware.

7 5. On Oct 18, 2015, said patent was duly and legally issued to plaintiff.

8 **FACTUAL BACKGROUND**

9 **I. THE ASSERTED '060 patent**

10 6. At all times relevant, KLEIN is and was the owner of the '060 patent and has and
11 had the rights thereunder. Plaintiff's patent was well known to defendant at all times relevant
12 hereto.

13 **II. DEFENDANT'S INFRINGEMENT OF THE '060 PATENT**

14 **A. THE DEFENDANT'S ACCUSED PRODUCTS**

15 7. Commencing within the three years, for purposes of sale, defendant has exposed,
16 marketed, made, used, offered to sell, sold, and/or imported into the United States kitchenware
17 incorporating plaintiff's patented design as taught by the '060 patent. The model name/numbers
18 of the defendant's kitchen include, without limitation, the Kraut Source.

19 **B. DEFENDANT'S DIRECT INFRINGEMENT OF THE '060 PATENT**

20 8. Commencing within the last years, defendant directly has infringed, and continue
21 to infringe the '060 patent because it, for purposes of sale, has exposed, used, demonstrated,
22 manufactured, imported, promoted, marketed, offered for sale, and sold the defendant's Kraut
23 Source kitchenware which incorporates KLEIN's patented design. In order to have done the
24 forgoing, the defendant's kitchenware utilized plaintiff's '060 patent.

25
26 **C. DEFENDANT'S INDUCED INFRINGEMENT OF THE '060 PATENT**

1 9. Commencing within the last two year, defendant is liable for indirect infringement
2 under 35 U.S.C. §271(b) because it has knowingly induced and continues to induce the direct
3 infringement the '060 patent by third parties.

4 10. Commencing within the last two years, third parties have directly infringed the
5 '060 patent by , for purposes of sale, exposing, buying , marketing, offering for sale and selling
6 the defendants' infringing kitchenware.

7 11. During said time period, defendant knowingly took active steps to induce third
8 parties in the United States to engage in direct infringement of the Claims of the '060 patent. For
9 example, Defendant provided, sold, or promoted the defendant's infringing kitchenware to third
10 party retailers, for purposes of said third parties to offer for sale and sell and knowing they would
11 resell, said kitchenware which actively induced said third parties to directly infringe the '060
12 patent .

13 12. During said time period, defendant possessed the specific intent to induce
14 infringement of the Claims of the '060 patent by third parties which intent was manifested, inter
15 alia, by their selling to retailers for purposes of resale defendant's infringing kitchenware.

16 13. During said time period, defendant had knowledge of the '060 patent and
17 knowledge that the sale and the resale by third parties of the defendant's kitchenware infringed
18 the '060 patent. During said time period, defendant knew that its actions would and did induce
19 infringement of the '060 patent by third parties. Defendant had actual knowledge of the '060
20 patent inter alia due to its knowledge of and association with plaintiff.

21 14. During said time period, defendant knew that exposing, demonstrating, marketing,
22 making, using, offering to sell, selling, and/or importing into the United States the defendant's
23 kitchenware constituted infringement of the '060 patent, based on, among other things, the
24 reasons alleged in the foregoing paragraphs.

25 15. During said time period, defendant has knowingly taken active steps to induce
26 third parties to engage in direct infringement of the '060 patent and has done so with an
27 affirmative intent to cause such direct infringement and/or with purposeful, culpable action and
28 conduct to encourage such direct infringement. Defendant's specific intent to induce

1 infringement is evidenced by, among other things, defendant actively selling said infringing
2 kitchenware to third party retailers for the express purpose of resale knowing that defendants'
3 acts would induce the third party retailers to offer for sale and to sell defendants' infringing
4 kitchenware and by so doing to directly infringe the '060 patent.

5 16. As a result of defendant's infringement of plaintiff's '060 patent, plaintiff has been
6 damaged in an amount according to proof and because defendant's infringement of the '060
7 patent was and continues to be wilful and deliberate and without a reasonable basis for believing
8 that its conduct was or is lawful, plaintiff is entitled to treble damages under 35 U.S.C. § 284 and
9 to attorney's fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

10 **WHEREFORE** plaintiff prays judgment as follows:

11 1. That defendant render an accounting for all profits defendant received by
12 infringing said patent;

13 2. For damages against defendant sufficient to compensate plaintiff in an amount
14 according to proof, but in excess of \$250,000;

15 3. For treble damages;

16 4. For costs and reasonable attorney fees of the subject litigation and interest as
17 allowable by law; and

18 5. For such other and further relief as the court may deem just and proper, including
19 injunctive relief.

20 DATED: August 30, 2017

21 /s/ Frear Stephen Schmid
22 Frear Stephen Schmid, Attorney for Plaintiff,

23 **DEMAND FOR JURY TRIAL**

24 Plaintiff hereby demands a jury trial.

25 DATED: August 30, 2017

26 /s/ Frear Stephen Schmid
27 Frear Stephen Schmid, Attorney for Plaintiff
28 SECURITY PEOPLE, INC.

JS-CAND 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Eric A. Klein

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

Cultured Gourmet, LLC

County of Residence of First Listed Defendant San Francisco
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	PERSONAL INJURY	PERSONAL INJURY	625 Drug Related Seizure of Property 21 USC § 881	375 False Claims Act
120 Marine	310 Airplane	365 Personal Injury - Product Liability	690 Other	376 Qui Tam (31 USC § 3729(a))
130 Miller Act	315 Airplane Product Liability	367 Health Care/Pharmaceutical Personal Injury Product Liability	LABOR	400 State Reapportionment
140 Negotiable Instrument	320 Assault, Libel & Slander	368 Asbestos Personal Injury Product Liability	710 Fair Labor Standards Act	410 Antitrust
150 Recovery of Overpayment Of Veteran's Benefits	330 Federal Employers' Liability	PERSONAL PROPERTY	720 Labor/Management Relations	430 Banks and Banking
151 Medicare Act	340 Marine	370 Other Fraud	740 Railway Labor Act	450 Commerce
152 Recovery of Defaulted Student Loans (Excludes Veterans)	345 Marine Product Liability	371 Truth in Lending	751 Family and Medical Leave Act	460 Deportation
153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	380 Other Personal Property Damage	790 Other Labor Litigation	470 Racketeer Influenced & Corrupt Organizations
160 Stockholders' Suits	355 Motor Vehicle Product Liability	385 Property Damage Product Liability	791 Employee Retirement Income Security Act	480 Consumer Credit
190 Other Contract	360 Other Personal Injury		IMMIGRATION	490 Cable/Sat TV
195 Contract Product Liability	362 Personal Injury -Medical Malpractice		462 Naturalization Application	850 Securities/Commodities/Exchange
196 Franchise	CIVIL RIGHTS	PRISONER PETITIONS	465 Other Immigration Actions	890 Other Statutory Actions
REAL PROPERTY	440 Other Civil Rights	HABEAS CORPUS		891 Agricultural Acts
210 Land Condemnation	441 Voting	463 Alien Detainee		893 Environmental Matters
220 Foreclosure	442 Employment	510 Motions to Vacate Sentence		895 Freedom of Information Act
230 Rent Lease & Ejectment	443 Housing/Accommodations	530 General		896 Arbitration
240 Torts to Land	445 Amer. w/Disabilities-Employment	535 Death Penalty		899 Administrative Procedure Act/Review or Appeal of Agency Decision
245 Tort Product Liability	446 Amer. w/Disabilities-Other	OTHER		950 Constitutionality of State Statutes
290 All Other Real Property	448 Education	540 Mandamus & Other		
		550 Civil Rights		
		555 Prison Condition		
		560 Civil Detainee-Conditions of Confinement		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation-Transfer ☐ 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
35 USC 284

Brief description of cause:
complaint for design patent infringement

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.

DEMAND \$ 250,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

☒ SAN FRANCISCO/OAKLAND

☐ SAN JOSE

☐ EUREKA-MCKINLEYVILLE

DATE 08/30/2017

SIGNATURE OF ATTORNEY OF RECORD

